

REMARKS

First, Applicant notes that the "Office Action Summary" (Form PTO-326) should be corrected to read for item 4a), Of the above, claim(s) 5-8 and 18-26 are withdrawn from consideration, as there are no "allowed" claims in the application.

Applicant respectfully traverses the rejection of claims 1-4 and 9-17 under 35 U.S.C. § 103(a) as being unpatentable over "**Admitted prior art** in combination with Kamiyama et al '638".

As Applicant understands line 6 on page 2 of the "final" Office Action, the Examiner states that the "final" rejection is maintained for the same reason as that presented in the previous Office Action (Paper No. 14) mailed February 26, 2002. In this previous Office Action, on page 2, the Examiner relied on Applicant's Figs. 8 and 9 as the "admitted prior art": "(see fig. 8 and 9 as captioned as prior art and pages 5-9)".

The foregoing amendment to the paragraph spanning pages 4 and 5 corrects an obvious translational error on page 4, lines 26-27, of the verified English translation (filed on April 20, 1999) of the subject application. More specifically, **Figures 8 and 9 are not statutory "prior art" under 35 U.S.C. § 102.**

To prove that the deleted reference to "Japanese Patent Application Pre-examination Publication No. JP-A-08-343125" is an obvious error in translation, Applicant first refers the Examiner to the passage (correctly) citing "Japanese Patent Application No. Heisei-08-343125" on page 10, line 23, of the verified English translation (filed on September 27, 2001) of the

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Japanese priority Patent Application No. Heisei 09-264225. (A duplicate of this page 10 is attached for the Examiner's convenience.) This (correct) passage corresponds to the mis-translated passage on page 4, lines 26-27 of the verified English translation of the present application. (Since the Japanese priority application was not explicitly incorporated by reference in the present U.S. application, Applicant realizes that the disclosure of the Japanese Priority Application is not literally a part of the present U.S. application, but Applicant also respectfully submits that the certified English translation of the Japanese Priority Document is clear and convincing evidence of the obvious error in the submitted English translation of the U.S. application.)

Second, the incorrectly cited "Japanese Patent Application Pre-examination Publication No. JP-A-08-343125" does **not exist**. Namely, JP-A-08-343125 has no pre-examination publication number. Anyone can learn this, from the Intellectual Property Digital Library (in English version) (web library) of the Japanese Patent Office, by inputting "H08-343125" as the pre-examination publication number.

On the other hand, Japanese Patent Application No. Heisei 08-343125 was not laid open (published) until **July 21, 1998** as JP-A-10-190142, a copy of which is attached for the Examiner's convenience. The code "(21)" on the front page of JP-A-10-190142 identifies the application number "8-343125". Furthermore, Applicant also encloses a copy of U.S. Patent No. 6,201,823 corresponding to Japanese Patent Application No. Heisei 08-343125. The "Foreign Application Priority Data" on the front page of U.S. Patent No. 6,201,823 identifies the Japanese

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priority application number as "8-343125". The Examiner will note that Figs 1 to 12 of JP-A-10-190142 correspond to Figs. 3, 4, 7 to 14, 1 and 2, respectively, of U.S. Patent No. 6,201,823. The Examiner also will note that Fig. 8 of the present application corresponds to Fig 3 of JP-A-10-190142 and Fig. 7 of U.S. Patent No. 6,201,823.

JP-A-10-190142 was not published until **July 21, 1998**, i.e., **after** the priority date (September 29, 1997) of the present application. U.S. Patent No. 6,201,823 was filed on December 24, 1997, i.e., also **after** the priority date of the present application. In addition, the sole inventor, Kimura, of the invention of the present application also is one of the two co-inventors of JP-A-10-190142 and U.S. Patent No. 6,201,823. Furthermore, the present application and U.S. Patent No. 6,201,823 are assigned to the same assignee, NEC Corporation.

Therefore, since the examples shown in Figs. 8 and 9 of the present application illustrate the invention disclosed in JP-A-10-190142 and U.S. Patent No. 6,201,823, and, thus, were not published or publicly known prior to the Japanese priority date of the present application, Figs. 8 and 9 of the present application are **not 35 U.S.C. § 102 "prior art"**.

Mr. Toyoaki Satoh made the certified English translations of both the present application and also the Japanese priority application No. Heisei 09-264225, and, **if the Examiner so requires**, Mr. Satoh will provide a written Declaration to confirm that he mistranslated the citation of the Japanese document in the former certified English translation, and that his choice of the term "prior art" was not intended to mean 35 U.S.C. § 102 prior art as used in U.S. practice. (Applicant respectfully submits that the *In re Nomiya* case (184 USPQ 607, 610), cited

in the MPEP §2129, does not apply here, because in that case an appeal was taken (to the CCPA) without deleting the incorrect label "Prior Art" from certain drawing figures.)

In view of the above facts involving the obvious translational error, Applicant respectfully submits that it should not be necessary to file a CPA/RCE or a CIP application to correct this obvious translational error.

Therefore, Applicant respectfully requests the Examiner to reconsider and withdraw the final rejection of claims 1-4 and 9-17 under 35 U.S.C. § 103(a) and to find the application to be in condition for allowance with claims 1-4 and 9-17. (The above amendments were not earlier made because it was only after the "final" action that Applicant discovered that the verified English translation of the present application contained the error noted above.) For the same reasons, Applicant respectfully requests the Examiner to enter the concurrently filed Proposed Drawing Correction in which the label "Prior Art" is removed from Figs. 8 and 9.

REQUEST FOR INTERVIEW

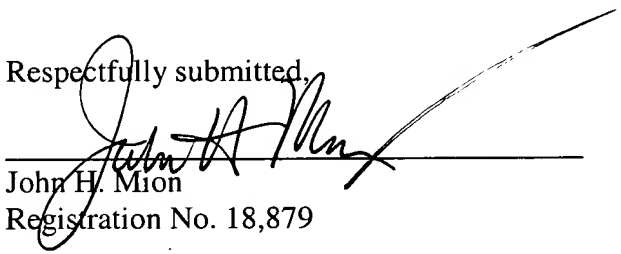
Applicant realizes that the above amendment correcting the designation of the Japanese patent document on page 4, line 27 of the specification is not enterable as a matter of right after a "final" action, but Applicant respectfully requests the Examiner to consider the above facts and the obvious translational error. If the application is not now considered to be in condition for allowance with claims 1-4 and 9-17 (after the non-elected claims 5-8 and 18-26 are canceled), Applicant respectfully requests the Examiner to **call the undersigned attorney** to discuss the

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matter (as Applicant does not feel it should be necessary to file a continuing application in order to correct this obvious error).

Applicant files concurrently herewith a Petition (with fee) for an Extension of Time of One Months. Applicant hereby petitions for any extension of time which may be required to maintain the pendency of this application, and any required fee for such extension is to be charged to Deposit Account No. 19-4880. The Commissioner is also authorized to charge any additional fees under 37 C.F.R. § 1.16 and/or § 1.17 necessary to keep this application pending in the Patent and Trademark Office or credit any overpayment to said Deposit Account No. 19-4880.

Respectfully submitted,


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WASHINGTON OFFICE



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PATENT TRADEMARK OFFICE

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0.1 μm -thick light guide layer 106 of silicon-doped n-type gallium nitride, a multi-quantum well structure active layer 707 of seven periods consisting of 30 Å-thick undoped $\text{In}_{0.2}\text{Ga}_{0.8}\text{N}$ quantum well layers and 60 Å-thick undoped $\text{In}_{0.05}\text{Ga}_{0.95}\text{N}$ barrier layers, a 200 Å-thick indium dissociation preventing layer 108 of magnesium-doped p-type $\text{Al}_{0.2}\text{Ga}_{0.8}\text{N}$, a 0.1 μm -thick light guide layer 109 of magnesium-doped p-type gallium nitride, a 0.5 μm -thick clad layer 710 of magnesium-doped p-type $\text{Al}_{0.05}\text{Ga}_{0.95}\text{N}$, a 0.2 μm -thick contact layer 111 of magnesium-doped p-type gallium nitride, a p-electrode 112 formed of nickel (a first layer) and gold (a second layer), an n-electrode 113 formed of titanium (a first layer) and aluminum (a second layer), and a silicon oxide film 215.

All of the semiconductor layers of the prior art nitride-based semiconductor laser shown in Fig. 7 are a hexagonal crystal having a surface of a (0001) plane. In addition, in the prior art nitride-based semiconductor laser shown in Fig. 7, after all the semiconductor layers are formed on the planar sapphire substrate 201 by a crystal growth, the stacked structure is partially removed by a dry etching so as to form a ridge structure.

Prior Art Example 8

Fig. 8 is a diagrammatic sectional view of the nitride-based semiconductor laser fabricated in accordance with a further prior art fabricating method (Japanese Patent Application No. Heisei-08-343125). Now, the structure of the prior art nitride-based semiconductor laser includes shown in Fig. 8 will be described. On a sapphire substrate 201 having a principal surface of a (11 $\bar{2}$ 0) plane, there are formed a 300 Å-thick undoped gallium nitride buffer layer 102 grown at a low